to be prejudicial to the interests or reputation of his master, or if it is incompatible with the due and faithful performance of his duty, his discharge is justifiable. *McEdwards v. Ogilvie* (1886) 4 Manitoba, 1. Since there clearly can be no fixed rule of law which, in every case, would determine this question, it seems properly one for the jury, with explicit instructions from the court as to what constitutes a sufficient ground for discharge. *Clouston v. Corry* [1906, H. L.] A. C. 122. But, when the servant's acts are flagrant, the court may hold as a matter of law that the discharge was justified. See *Dorrance v. Hoopes* (1914) 122 Md. 344, 352, 90 Atl. 92, 95. A choir master may be discharged for being once intoxicated, because of the effect that condonation of his offense would have upon his pupils. *Martin v. Lane* (1885) 3 Manitoba 314. The owner of a plantation may refuse to turn it over to an overseer who is drunk at the time. *Johnson v. Gorman* (1860) 30 Ga. 612. And a railroad engineer who was occasionally noticeably affected by liquor while on duty may be discharged, since it would clearly have been negligence on the part of the company towards its passengers to have retained him. *Smith v. Ry.* (1895) 60 Minn. 330, 62 N. W. 392. Moreover, it is unnecessary that the drunkenness occur while the servant is on duty, if he is by it rendered incapable of faithful and efficient performance. *Ulrich v. Hower* (1893) 156 Pa. 414, 27 Atl. 243. On the other hand, occasional intoxication may not be of much importance, as in the case of an apprentice. *Wise v. Wilson* (1845, N. P.) 1 Car. & Kir. 662. Or in the case of seamen, with whom courts of admiralty are inclined to be rather lenient. *The Atlantic* (1862, Adm.) Lush. 566; *The El Dorado* (1868, D. Mass.) Lowell 289. Under the circumstances of the principal case, where there is a reasonable doubt as to the severity of the plaintiff's offense, it seems that the court's view that the case should have been submitted to the jury is correct. Regarding grounds of dismissal generally, see (1918) 27 YALE LAW JOURNAL, 954. And as to the damages recoverable, see (1912) 21 *id.* 691.

AGENCY—MASTER AND SERVANT—LIABILITY OF MASTER FOR INJURY TO VOLUNTEER.—The defendant's servant, who was operating a motor truck, invited the plaintiff, a minor, without authority, to assist him in unloading the truck. While driving back to the defendant's shop, the plaintiff was asked to ride on the running board to facilitate the driving, and while they were rounding a curve at considerable speed, he was thrown from the truck and sustained the alleged injuries. The plaintiff was non-suited. *Held,* that there should be a new trial. *Kalmich v. White* (1920, Conn.) 111 Atl. 845.

The English rule absolves the master on the fellow-servant doctrine; while the majority of the American courts reach the same conclusion on the theory that, the relation of master and servant not existing, the volunteer assumes all risks and has a cause of action for wilful or wanton injury only. For a discussion of the English and American cases, see (1920) 30 YALE LAW JOURNAL, 85, commenting on *Heasmer v. Pickfords, Ltd.* (1920, K. B.) 36 T. L. R. 818; *Grissom v. Atlanta Ry.* (1907) 152 Ala. 110, 44 So. 661; see *Geer v. Sound Transfer Co.* (1915) 88 Wash. 1, 4, 152 Pac. 691, 693. The instant case, however, places the volunteer on the same footing as a trespasser. It is generally recognized that one owes a trespasser the duty of using ordinary care to avoid injuring him after discovering him in a perilous position. *Webb v. Kansas City So. Ry.* (1919) 137 Ark. 107, 208 S. W. 301; 29 Cyc. 443. See also (1921) 30 YALE LAW JOURNAL, 201. It is submitted that this step is justifiable in view of the fact that a volunteer is present to promote the interests of the master, while a trespasser is a tort-feasor. Hence it seems not extreme but a logical development to hold that a volunteer should enjoy at least as advantageous a position as a trespasser. See *Evarts v. St. Paul Ry.* (1894) 56 Minn. 146, 57 N. W. 459, 460.